



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 230726-0176]

RIN 0648-BM45

### Control Date for Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet Length Overall and Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; control date; request for comments.

**SUMMARY:** At the request of the North Pacific Fishery Management Council (Council), this document announces a control date of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, that may be used to determine future participation in the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery by license limitation program (LLP) license holders, vessel owners and vessel operators of catcher/processors (C/Ps), and vessel owners and vessel operators of catcher vessels (C/Vs) greater than or equal to 60 ft (18.3 meters (m)) length overall (LOA), who participate in Federal groundfish fisheries with pot gear in the BSAI. This document is necessary to inform interested parties that the Council is considering a future action that may affect or limit the number of participants in this fishery and that participants should locate and preserve all fishing related documents. This control date corresponds to the date of publication of this advance notice of proposed rulemaking (ANPR). This document provides notice to the public that any person participating in the applicable sector after the control date may not receive continued access to this fishery under a

future management action. This document is intended to discourage speculative entry or fishing activity in this fishery while the Council considers whether and how access to the fishery may be further limited under a future management action.

**DATES:** Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, shall be known as the control date for LLP license holders, vessel owners, and vessel operators of C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA who participate in Federal groundfish fisheries with pot gear in the BSAI, and may be used as a reference date for participation in a future management action that is consistent with the Council’s objectives and applicable Federal laws.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0088, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0088 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- *Fax:* (907)586-7465; Attn: Gretchen Harrington.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](https://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Please consult the Council's website at <https://www.npfmc.org/> for information on public participation in the Council's decision-making process.

**FOR FURTHER INFORMATION CONTACT:** Alicia M. Miller: 907-586-7228 or [alicia.m.miller@noaa.gov](mailto:alicia.m.miller@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This ANPR establishes **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** as the control date for use in determining historical participation in the BSAI Pacific cod pot gear catcher/processors (C/P) and catcher vessels (C/Vs) greater than or equal to 60 ft (18.3 m) length overall (LOA) fishery. Interested persons should locate and preserve all records that substantiate and verify their participation in this fishery.

On June 11, 2023, the Council announced its intent to evaluate participation and effort in the BSAI Pacific cod pot gear C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA fishery and consider further limits on access to this fishery. This document is intended to promote awareness of possible rulemaking and provide notice to the public that any person participating in the BSAI Pacific cod pot C/P and C/V greater than or equal to 60 ft (18.3 m) LOA fishery after the control date may not have continued access

to this fishery under a future management action. This document is also intended to discourage speculative entry into this fishery while the Council considers whether and how access to the fishery may be further limited under a future management action. The Council requested that the date of their decision be established as the control date. However, because this ANPR cannot act as a retroactive notice to the public and can act only as a prospective notice, the date of this ANPR's publication in the **Federal Register** is the control date. This ANPR is being published relatively close to the Council's decision date and consequently provides most of the temporal disincentives to further entry into the fishery as the Council's decision date.

This ANPR and related future rulemaking would apply to LLP license holders, vessel owners, and vessel operators of C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA who participate in Federal groundfish fisheries with pot gear in the BSAI. The BSAI is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

The Council and NMFS annually establish overfishing limits and annual total allowable catch limits for groundfish species to sustainably manage the groundfish fisheries in the BSAI. To achieve these objectives, NMFS requires vessel operators participating in BSAI Pacific cod fishery to comply with various regulatory restrictions, such as fishery closures and limits on participation and effort.

The Council and NMFS have long sought to control fishing effort in the North Pacific Ocean, including the BSAI management area, to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the LLP, which limits access to the federally managed groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska (GOA). For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed

explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

A vessel participating in groundfish fisheries in Federal waters in the BSAI or the GOA is required to have an LLP license with the applicable area, gear, and operation type endorsements, and a sufficient maximum LOA. In 2023, there were a total of seven LLP licenses with a Bering Sea (BS) Pacific cod pot C/P endorsement. Of those seven LLP licenses, five LLP licenses also had an Aleutian Islands (AI) Pacific cod pot C/P endorsement. In 2023 there were a total of fifty LLP licenses with a BS Pacific cod pot C/V endorsement with a minimum LOA of equal to or greater than 60 ft. Of those fifty LLP licenses, two also had an AI Pacific cod pot C/V endorsement with a maximum LOA of equal to or greater than 60 ft

As it had in previous meetings over time, in June 2023, the Council received public testimony from participants in the BSAI Pacific cod pot C/V sector. These participants requested Council action to address factors that are negatively impacting fishery participants. These factors include: decreasing Pacific cod catch limits; an increase in the number of participating LLP licenses in the C/V sector; the potential for additional new participants in both the C/V sector and the CP sector; a race among existing participants (often in unsafe conditions) to harvest the available Pacific cod catch limits, resulting in an inability to control bycatch of crab; and increasingly shortened seasons in recent years.

After considering this public testimony at the June meeting, the Council stated its intent to evaluate methods - including allocation of available Pacific cod, bycatch management, and cooperatives - for further limiting participation by CPs and C/Vs greater than or equal to 60 ft LOA using pot gear in a future management action. To prevent speculative entry into these fishery sectors during this deliberative period, the Council announced a control date. The control date may be used as a cutoff or reference

date for a future management action to further limit access to the BSAI Pacific cod pot gear C/P and C/V sectors. The Council is not obligated to use this control date in any future management action. Furthermore, this control date does not obligate the Council to take any action and does not prevent the Council from selecting another control date. Accordingly, this document is intended to promote awareness that the Council may develop a future management action to achieve its objectives for the BSAI Pacific cod pot C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA; to provide awareness to the public that new eligibility criteria for any current or future access to the Pacific cod pot gear fishery may be affected or restricted; and to discourage speculative participation and behavior in the fishery while the Council considers whether to initiate a management action to further limit access to this fishery. Any measures the Council considers may require changes to the FMP. Such measures may be adopted in a future amendment to the FMP, which would require a rulemaking action that includes opportunity for further public participation and comment.

NMFS encourages public participation in the Council's consideration of a management action to further limit access to BSAI Pacific cod fishery. Please consult the Council's website (See ADDRESSES) for information on public participation in the Council's consideration of a management action. The Council will schedule review of information collected and analyses prepared for a future Council meeting or meetings.

This notification and control date do not impose any legal obligations, requirements, or expectations.

**Authority:** 16 U.S.C. 1801 *et seq.*

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